

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

DOCKET NO. 2006-234-C - ORDER NO. 2006-696

DECEMBER 1, 2006

IN RE:	Application of Acceris Management and	)	ORDER GRANTING
	Acquisition, LLC and First Communications,	)	CERTIFICATE AND
	LLC for (i) Authority for First	)	APPROVING MODIFIED
	Communications, LLC to Provide Resold	)	ALTERNATIVE
	Interexchange Telecommunications Services	)	REGULATION
	through the State of South Carolina and (ii)	)	
	Approval of the Transfer of Assets, Including	)	
	Customers of Acceris Management and	)	
	Acquisition, LLC to First Communications,	)	
	LLC	)	

This matter comes before the Public Service Commission of South Carolina (“Commission”) by way of the Application of Acceris Management and Acquisition, LLC (“Acceris”) and First Communications, LLC (“First” or “First Communications”) (together “the Applicants”) requesting approval of an asset transfer, including business customers, from Acceris to First and for a Certificate of Public Convenience and Necessity authorizing First to provide resold interexchange telecommunications services within the State of South Carolina. The Company’s Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2005) and the rules and regulations of the Commission. By its Application, First also requests modified alternative regulation of its business services offerings identical to that granted to AT&T Communications in Order

Nos. 95-1734 and 96-55 in Docket No. 95-661-C as modified by Order No. 2001-997, and waiver of certain Commission regulations.

The Commission's Docketing Department instructed the Applicants to publish, one time, a Notice of Filing in newspapers of general circulation in the areas of the State affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the Application of Acceris and First and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. The Applicants complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. No Protests or Petitions to Intervene were filed.

Subsequently, the Applicants and ORS filed a Settlement Agreement, which is attached hereto as Order Exhibit 1. A hearing was convened on October 30, 2006, at 10:00 a.m. in the Commission's Law Library, Columbia, South Carolina, before David Butler, Hearing Examiner. The Applicants were represented by John J. Pringle, Jr., Esquire. The Office of Regulatory Staff ("ORS") was represented by Wendy B. Cartledge, Esquire.

Mary Cegelski, the Manager of Regulatory Affairs: Carrier Relations for First Communications, testified via video conferencing in support of the Application. The record reveals that Acceris is a limited liability company under the laws of the State of Minnesota, and First Communications is a limited liability company under the laws of the State of Ohio. Both have qualified as foreign limited liability companies with the South Carolina Secretary of State under the laws of the State of South Carolina. According to Ms. Cegelski, First wishes to do business in South Carolina as a reseller of interexchange

services. Ms. Cegelski explained First's request for authority, and the record further reveals First's services, operations, and marketing procedures. First's primary market will be the business customers acquired from Acceris if the asset transfer portion of the Application is approved, but the Company may serve residential customers as well.

Ms. Cegelski also discussed First's technical, financial, and managerial resources to provide the services for which it seeks authority. Ms. Cegelski offered that First Communications possesses sufficient financial resources to support its operations in South Carolina.

With regard to management and technical capabilities, the Company's Application and Ms. Cegelski's testimony both evidence that First's management has extensive experience in telecommunications, information technology, regulatory matters, and accounting and finance. Ms. Cegelski also testified that First will operate in accordance with Commission rules, regulations, guidelines, and Commission Orders.

Ms. Cegelski offered that approval of the Application would serve the public interest by increasing the level of competition in South Carolina. The Application requests a waiver of 26 S.C. Code Ann. Regs.103-610 since the Company's books and records are housed in another State. Further, the Company requests an exemption from record keeping policies that require maintenance of financial records in conformance with the Uniform System of Accounts ("USOA"). First maintains its books in accordance with Generally Accepted Accounting Principles ("GAAP").

After full consideration of the applicable law, the Company's Application, and the

evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. Acceris is a limited liability company organized under the laws of the State of Minnesota. First Communications is a limited liability company organized under the laws of the State of Ohio. Both have qualified as foreign limited liability companies with the South Carolina Secretary of State under the laws of the State of South Carolina.
2. Acerris desires to transfer certain assets, including business customers, to First Communications. First Communications desires to operate as a provider of resold interexchange services in South Carolina.
3. We find that the asset transfer from Acceris to First should be approved. We also find that First possesses the managerial experience and capability to operate as a provider, through resale, of interexchange services in South Carolina.
4. We find, based on the financial statements submitted by the Company, that First Communications possesses sufficient financial resources to provide the services as described in its Application and testimony.
5. We find that the issuance of a Certificate of Public Convenience and Necessity to First to operate as a reseller of interexchange services in South Carolina would be in the best interest of the citizens of South Carolina by increasing the level of competition in South Carolina, by providing an alternative source for telecommunications services, and by creating incentives for lower prices, more innovative services, and more responsive customer service.

6. First Communications requests a waiver of 26 S.C. Code Ann. Regs. 103-610. The Commission finds the requested waiver reasonable and understands the potential difficulty presented to First should the waiver not be granted. Further, we find a waiver of 26 S.C. Code Ann. Regs. 103-610 to be in the public interest. We also believe that exemption from the policies that would require the Company to keep its records under the USOA is reasonable.

7. First Communications has the managerial, technical, and financial resources to provide the services as described in its Application.

#### **CONCLUSIONS OF LAW**

1. The Commission concludes that the asset transfer from Acceris to First Communications is reasonable and should be approved, and that First Communications possesses the managerial, technical, and financial resources to provide the telecommunications services as described in its Application.

2. The Commission concludes that approval of a Certificate for First Communications to provide intrastate telecommunications services within South Carolina will serve the public interest by enhancing competition in the State of South Carolina by offering additional service offerings to South Carolina's consumers and by providing for efficient use of existing telecommunications resources.

3. The Commission concludes that the approval of the asset transfer and the issuance of the authority to provide interexchange telecommunications services as requested by First and as set forth in the Application and Ms. Cegelski's testimony is in the best interests of the citizens of the State of South Carolina.

4. The Commission concludes that a Certificate of Public Convenience and Necessity should be granted to First Communications to provide resold intrastate interexchange telecommunications services.

5. The Commission adopts a rate design for First for its residential interexchange services which includes maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

6. First Communications shall not adjust its residential interexchange rates below the approved maximum level without notice to the Commission and to the public. First shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential interexchange services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp.2005).

7. The Commission concludes that First's intrastate interexchange business telecommunications services shall be regulated in accordance with the principles and procedures established for alternative regulation of business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. The Commission has previously granted this "alternative regulation" to competitive intrastate interexchange carriers operating within South Carolina, and the Commission concludes that the competitive marketplace requires the Commission to allow this flexible regulation to those carriers which request it. Specifically, the Commission-approved alternative regulation allows business service offerings, including consumer card services and operator services, to be subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However, pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain "operator-assisted calls" where a customer uses a local exchange carrier's calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing subject to a request to investigate being filed within seven days of any tariff filing. If a particular tariff filing request to investigate is made within the seven days, the tariff filing will then be suspended until further Order of the Commission.

8. We conclude that the request for waiver of 26 S.C. Code Ann. Regs. 103-610 should be granted as strict compliance with the regulation would potentially cause undue hardship on First Communications. We also grant exemption from the policies requiring the use of USOA.

9. The Settlement Agreement between the parties should be approved.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. A Certificate of Public Convenience and Necessity should be granted to First Communications to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through resale of intrastate Wide Area Telecommunications Services (“WATS”), Message Telecommunications Service (“MTS”), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission. The Company is also specifically authorized to provide resold inbound and outbound interexchange telecommunications services and operator-assisted services. The asset transfer between Acceris and First Communications is also approved.

2. The Company’s rate designs for its products shall conform to those designs described in Conclusions of Law above.

3. If it has not already done so by the date of issuance of this Order, First shall file its revised tariff and an accompanying price list for any applicable rates within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission’s Rules and Regulations, as well as the provisions of the Applicants-ORS Stipulation.



4. First Communications is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

5. With regard to the Company's resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

6. First Communications shall resell the services of only those interexchange carriers authorized to do business in South Carolina by this Commission. If First changes underlying carriers, it shall notify the Commission in writing.

7. With regard to the origination and termination of toll calls within the same LATA, First Communications shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the FCC pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, First Communications shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

8. First Communications shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, First shall keep financial records on an intrastate basis for South Carolina to

comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the Commission's website at [www.psc.sc.gov/forms.asp](http://www.psc.sc.gov/forms.asp) or at the ORS's website at [www.regulatorystaff.sc.gov](http://www.regulatorystaff.sc.gov). The title of this form is "Telecommunications Company Annual Report." This form shall be utilized by the Company to file annual financial information with the Commission and ORS and shall be filed no later than **April 1<sup>st</sup>**.

Commission gross receipts forms are due to be filed with the Commission and ORS no later than **August 31<sup>st</sup>** of each year. The proper form for filing gross receipts information can be found at the ORS website at [www.regulatorystaff.sc.gov](http://www.regulatorystaff.sc.gov), and the appropriate form is entitled "Gross Receipts Form."

Each telecommunications company certified in South Carolina is required to file annually with the ORS the Intrastate Universal Service Fund ("USF") worksheet, which may be found on the ORS's website at [www.regulatorystaff.sc.gov](http://www.regulatorystaff.sc.gov). This worksheet provides ORS information required to determine each telecommunications company's liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than **August 15<sup>th</sup>** with the Commission and ORS.

9. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission and ORS in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

First Communications shall file the names, addresses, and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The “Authorized Utility Representative Information” form can be found at the Commission’s website at [www.psc.sc.gov/forms.asp](http://www.psc.sc.gov/forms.asp); this form shall be utilized for the provision of this information to the Commission and ORS. Further, the Company shall promptly notify the Commission and ORS in writing if the representatives are replaced.

10. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

11. At the hearing, First Communications requested a waiver of 26 Code Ann. Regs. 103-610 (Supp. 2005), which requires that records required by the Commission’s Rules and Regulations be maintained in South Carolina. The Commission finds First’s requested waiver reasonable and understands the potential difficulty presented to First should the waiver not be granted. The Commission therefore grants the requested waiver. First shall make available its books and records at all reasonable times upon request by the Office of Regulatory Staff, and First shall promptly notify the Commission and ORS if the location of its books and records changes.

12. First also requests that it be exempt from record keeping policies that require a carrier to maintain its financial records in conformance with the Uniform System of Accounts. The USOA was developed by the FCC as a means of regulating telecommunications companies subject to rate base regulation. As a competitive carrier, First maintains its book of accounts in accordance with Generally Accepted Accounting Principles. GAAP is used extensively by interexchange carriers and other providers.

Accordingly, First Communications requests an exemption from the USOA requirements.

We grant the Company's request for the reasons stated above.

13. The Settlement Agreement between the parties is hereby approved.

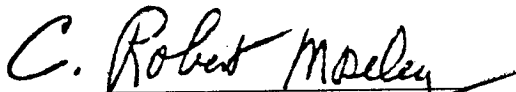
14. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



G. O'Neal Hamilton, Chairman

ATTEST:



C. Robert Moseley, Vice Chairman

(SEAL)

Docket No. 2006-234-C

Order No. 2006-696

December 1, 2006

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2006-234-C**

**October 24, 2006**

**IN RE:**

**Application of Acceris Management and )  
Acquisition, LLC and First )  
Communications, LLC for (i) Authority )  
for First Communications, LLC to )  
Provide Resold Interexchange )  
Telecommunications Services throughout )  
The State of South Carolinas and )  
(ii) Approval of the Transfer of Assets )  
Including Customers, of Acceris )  
Management and Acquisition, LLC )  
To First Communications, LLC )**  

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**SETTLEMENT AGREEMENT**

This Settlement Agreement ("Settlement Agreement") is made by and among the Office of Regulatory Staff ("ORS") and Acceris Management and Acquisition, LLC ("Acceris") and First Communications, LLC ("First" or "the Company") (collectively referred to as the "Parties" or sometimes individually as "Party");

WHEREAS, on August 7, 2006, Acceris and First filed an application requesting (i) a Certificate of Public Convenience and Necessity be granted to First to provide resold interexchange telecommunications services throughout the State of South Carolina; (ii) alternative regulation for its long distance services in accordance with the procedures set out in Commission Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C as modified

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by Commission Order No. 2001-997 in Docket No. 2000-407-C; and (iii) approval of an asset transfer from Acceris to First;

WHEREAS, on August 16, 2006, the Commission appointed David Butler, Esquire as the Hearing Examiner for this matter;

WHEREAS, on August 11, 2006, counsel for ORS entered a notice of appearance in this matter;

WHEREAS, on August 14, 2006, the Public Service Commission of South Carolina (the "Commission") issued a notice of hearing and set return dates for the hearing in the above captioned matter scheduled to be heard before a Hearing Examiner on October 30, 2006;

WHEREAS, on September 18, 2006, Acceris and First pre-filed testimony of Mary Cegelski with the Commission;

WHEREAS, on September 27, 2006, 2006 Acceris and First filed a Motion to Hold Hearing by Videoconference and on September 28, 2006, the Hearing Examiner issued a Directive granting Acceris and First's motion.

WHEREAS, the purpose of this proceeding is to review the application filed by Acceris and First and its request for a Certificate of Public Convenience and Necessity and to review Acceris' request for approval of an asset transfer;

WHEREAS, since the filing of the notice, ORS has conducted a review of the technical, managerial, and financial expertise of the Company to provide such services;

WHEREAS, ORS has reviewed the application and the financial data provided by the Company, and ORS has calculated certain performance ratios based upon information provided by the Company;

WHEREAS, ORS has investigated the services to be offered by First and its intended customer service plans;

WHEREAS, ORS has reviewed the prefiled testimony of Mary Cegelski and the description of the proposed asset transfer from Acceris to First;

WHEREAS, as a result of its investigations, ORS has determined a) First intends to offer resold interexchange telecommunications services throughout the State of South Carolina and to serve the Business customers being acquired from Acceris; b) the officers of First possess sufficient technical and managerial abilities to adequately provide the services applied for; c) based upon the limited financial information provided and the analysis performed First appears to have the financial resources necessary to provide the services proposed in its application; d) First agrees to file its final tariff with the Commission and agrees to incorporate within its tariff the same type of services, rates, terms, and conditions of Acceris to ensure that the business customers transferred from Acceris will not experience any change in its services and rates; e) the services provided by First will meet the service standards required by the Commission; and f) to the extent it is required to do so by the Commission, First will participate in the support of universally available telephone service at affordable rates.

WHEREAS, to ensure compliance with the Commission's statutes and regulations, the Parties have agreed to the following comprehensive settlement of all issues in this docket;

WHEREFORE, in the spirit of compromise, the Parties hereby stipulate and agree to the following terms and conditions:

1) The Parties agree to stipulate into the record before the Commission this Settlement Agreement. The Parties also agree to stipulate to the pre-filed testimony of Acceris and First Witness Mary Cegelski who will be presented without cross-examination by ORS;

2) The Parties agree that the Company should be granted a Certificate of Public Convenience and Necessity to provide resold interexchange telecommunications services within the state of South Carolina;

3) ORS does not oppose the Company's request for waiver of 26 S.C. Code Ann. Regs. 103-610 (location of books and records) provided that the Company agrees that upon the request of ORS, the Company shall provide access to its books and records to ORS at the Company's sole expense;

4) ORS does not oppose First's request for waiver of compliance with any Commission rules or policies requiring a carrier to maintain its financial records in conformance with the Uniform System of Accounts ("USOA");

5) ORS does not oppose the Company's request that all of its telecommunications offerings be regulated as described in its application pursuant to the procedures set out in Commission Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C as modified by Commission Order No. 2001-997 in Docket No. 2000-407-C;

6) First agrees to resell the services of only those interexchange carriers authorized to do business in South Carolina by the Commission.

7) First agrees that the Company will allow an end-user of resold services to access an alternative interexchange carrier or operator service provider if the end-user expresses such a desire;



8) Acceris and First agree to file necessary financial information with the Commission and ORS for universal service fund reporting, annual reporting and gross receipts. The parties agree that such reports shall be filed pursuant to ORS instructions and monies shall be remitted in accordance with the directions of ORS and the Commission;

9) In the event that the Company offers prepaid calling card services in the future, First agrees that it shall post a surety bond in the amount of \$5,000 as required by the South Carolina Public Service Commission (the "Commission").

10) Prior to transfer of the customer accounts, First and Acceris agree to provide thirty (30) days customer notification pertaining to the transfer of Acceris' services to First and notifying customers of their right to select another telecommunications provider. First and Acceris agree to file a copy of the customer notice letter with the Commission and ORS. First further agrees to provide the South Carolina Public Service Commission (the "Commission") and ORS with copies of any correspondence filed with the Federal Communications Commission ("FCC") related to this transaction;

11) No later than thirty days after the close of the transaction, First agrees to provide notice to the ORS and the Commission of the conclusion of the transaction.

12) First agrees to comply with all rules and regulations of the Commission unless the Commission has expressly waived such rule or regulation;

13) First and Acceris shall provide information to ORS concerning the revenue impact of the transfer of South Carolina business customers from Acceris to First.

14) First shall assume the 2006 support obligation of Acceris to the Intrastate Universal Service Fund for those customers transferred to First from Acceris until such

time as First's own company specific information is utilized in the calculations made annually to establish the Universal Support Fund factor.

15) ORS does not object to Commission approval of the transfer of assets including customer accounts from Acceris to First subject to the conditions enumerated in this Settlement Agreement;

16) ORS is charged by law with the duty to represent the public interest of South Carolina pursuant to S.C. Code § 58-4-10(B) (added by Act 175). S.C. Code § 58-4-10(B)(1) through (3) read in part as follows:

... 'public interest' means a balancing of the following:

- (1) concerns of the using and consuming public with respect to public utility services, regardless of the class of customer;
- (2) economic development and job attraction and retention in South Carolina; and
- (3) preservation of the financial integrity of the State's public utilities and continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services.

ORS believes the Settlement Agreement reached among the Parties serves the public interest as defined above;

17) The Parties agree to advocate that the Commission accept and approve this Settlement Agreement in its entirety as a fair, reasonable and full resolution of all issues in the above-captioned proceeding and to take no action inconsistent with its adoption by the Commission. The Parties further agree to cooperate in good faith with one another in recommending to the Commission that this Settlement Agreement be accepted and approved by the Commission. The Parties agree to use reasonable efforts to defend and support any Commission order issued approving this Settlement Agreement and the terms and conditions contained herein;

18) The Parties agree that signing this Settlement Agreement will not constrain, inhibit, impair or prejudice their arguments or positions held in other collateral proceedings, nor will it constitute a precedent or evidence of acceptable practice in future proceedings. If the Commission declines to approve the Settlement Agreement in its entirety, then any Party desiring to do so may withdraw from the Settlement Agreement in its entirety without penalty or obligation;

19) This Settlement Agreement shall be interpreted according to South Carolina law;

20) The above terms and conditions fully represent the agreement of the Parties hereto. Therefore, each Party acknowledges its consent and agreement to this Settlement Agreement by affixing its signature or by authorizing counsel to affix his or her signature to this document where indicated below. Counsel's signature represents his or her representation that his or her client has authorized the execution of the agreement. Facsimile signatures and email signatures shall be as effective as original signatures to bind any party. This document may be signed in counterparts, with the original signature pages combined with the body of the document constituting an original and provable copy of this Settlement Agreement. The Parties agree that in the event any Party should fail to indicate its consent to this Settlement Agreement and the terms contained herein, then this Settlement Agreement shall be null and void and will not be binding on any Party.

(Signature Pages Follow)

ocket No. 2006-234-C

Order No. 2006-696

December 1, 2006

WE AGREE:

**Representing the Office of Regulatory Staff**

Wendy B. Cartledge

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WE AGREE:

**Representing Acceris Management and Acquisition, LLC and  
First Communications, LLC**

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